

**LORETO A. CAÑAVERAS AND OFELIA B. CAÑAVERAS, PETITIONERS,
VS. JUDGE JOCELYN P. GAMBOA-DELOS SANTOS AND RODEL
MARIANO, RESPONDENTS.***G.R. No. 241348. July 05, 2022*

Ponente: INTING, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-241348/>**INTING, J.:**

Before the Court is a petition for certiorari[1] under Rule 65 of the Rules of Court which assails the Order[2] dated June 6, 2018 issued in Criminal Case No. 17-0597 by Presiding Judge Jocelyn P. Gamboa-Delos Santos (Judge Gamboa-Delos Santos) of Branch 4, Municipal Trial Court in Cities (MTCC), City of San Fernando, Pampanga. Incorporated in the petition is a prayer for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction (WPI) that seeks to enjoin Judge Gamboa-Delos Santos from further proceeding in Criminal Case No. 17-0597.

Furthermore, the petition seeks to declare unconstitutional the second sentence[3] of Section 10(b) of A.M. No. 12-8-8-SC,[4] or the Judicial Affidavit Rule.

The Antecedents

Loreto A. Cañaveras and Ofelia B. Cañaveras (collectively, petitioners) are the accused in a criminal case for Falsification of Public Documents by a Private Individual under Article 172 in relation to Article 171 of the Revised Penal Code docketed as Criminal Case No. 17-0597. The case was filed before the MTCC, City of San Fernando, Pampanga and assigned to Branch 4 thereof, which was presided by Judge Gamboa-Delos Santos.[5]

On May 23, 2018, the prosecution was scheduled to present its witness, Nenita G. Mariano (Nenita). Atty. Vicente Dante P. Adan (Atty. Adan), counsel for petitioners, failed to attend the scheduled hearing.[6]

In the Order[7] dated May 23, 2018, Judge Gamboa-Delos Santos ruled that "the absence of counsel for the defense despite notice is construed as waiver on the part of the defense to cross examine witness [Nenita]."[8]

On June 6, 2018, the case was scheduled for the presentation of Rodel G. Mariano (Rodel), the second witness for the prosecution. During the hearing, Atty. Adan orally moved for reconsideration of the Order dated May 23, 2018 that deemed his absence from the scheduled hearing as a waiver on the part of the defense to cross-examine Nenita. Atty. Adan explained that he consulted a doctor on the date of the hearing because of the pain he experienced in his eyes. He presented an unnotarized Medical Certificate[9] dated May 23, 2018.[10]

Public Prosecutor Rowena Figueroa (Prosec. Figueroa) and Atty. Raul Macalino, who assisted prosecution witness Rodel, objected to the motion for reconsideration on the following grounds: (1) that the medical certificate of Atty. Adan was not notarized and (2) that postponement under the Revised Guidelines for Continuous Trial of Criminal Cases[11] shall only be allowed by reason of force majeure or physical inability of the witness to appear in court coupled by a proof of payment of the prescribed postponement fee.[12]

Judge Gamboa-Delos Santos denied Atty. Adan's motion for reconsideration in the Order[13] dated June 6, 2018. Trial proceeded.[14]

Atty. Adan objected to the presentation of Rodel as a witness on the ground that the latter's Complaint-Affidavit[15] being presented by the prosecution did not comply with the Judicial Affidavit Rule. However, Judge Gamboa-Delos Santos ruled that under the Revised Guidelines for Continuous Trial of Criminal Cases, prosecutors are allowed to utilize the affidavit that was used before the Office of the City Prosecutor. Judge Gamboa-Delos Santos sustained her ruling despite Atty. Adan's insistence that the Revised Guidelines for Continuous Trial of Criminal Cases will not apply when there is a private prosecutor handling the case.[16]

After the testimony of Rodel was concluded, Atty. Adan moved for the second reconsideration of the Order dated May 23, 2018. Prosec. Figueroa objected to the motion. Thereafter, Judge Gamboa-Delos Santos denied the motion on the ground that it is prohibited.[17]

Hence, the present petition.

The Issues

Petitioners raise the following issues before the Court:

- WHETHER THE SECOND SENTENCE OF SEC. 10 (b) OF THE JUDICIAL AFFIDAVIT RULE IS UNCONSTITUTIONAL.
- WHETHER THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE QUESTIONED ORDER, DATED JUNE 6, 2018.
- WHETHER PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION FOR ALLOWING THE PRESENTATION OF WITNESS DESPITE NON-COMPLIANCE WITH THE JUDICIAL AFFIDAVIT RULE.
- WHETHER THE PETITIONER[S] [ARE] ENTITLED TO AN ISSUANCE OF A TEMPORARY RESTRAINING ORDER (TRO) OR A WRIT OF PRELIMINARY INJUNCTION[.][18]

With respect to the fourth issue raised, the Court had already resolved to deny the prayer for TRO or WPI in the Minute Resolution[19] dated September 25, 2018. In any case, petitioners' prayer for injunctive relief is already rendered moot in view of Judge Gamboa-Delos Santos' issuance of the Order[20] dated June 21, 2019, wherein she had voluntarily inhibited herself from further hearing Criminal Case No. 17-0597 because of Atty. Adan's indications of lack of faith and trust towards her.

Petitioners' Arguments

In their petition for certiorari, petitioners allege that on May 23, 2018, Atty. Adan, who was then in Iloilo due to a special engagement, was already on his way to attend the hearing. He was originally booked on a flight from Iloilo to Manila on May 23, 2018.[21] To make sure that he would not be late for the scheduled hearing, he rescheduled his flight to May 22, 2018.[22] However, in the morning of May 23, 2018, Atty. Adan experienced eye pain and headache which did not subside despite taking medication; and his eyes were discharging a lot of rheum that necessitated a visit to a doctor, who advised him to consult an ophthalmologist. The ophthalmologist who saw him diagnosed him with conjunctival cysts, trichiasis, and dry eye syndrome, as shown in the Medical Certificate[23] dated May 23, 2018. Because of his ailment, Atty. Adan was prevented from attending the hearing on May 23, 2018.[24]

Aggrieved by the Order dated June 6, 2018 that deemed them to have waived their right to cross-examine Nenita, petitioners argue that the second sentence of Section 10(b) of the Judicial Affidavit Rule is unconstitutional. They aver that the waiver of the right of a lawyer's client to confront the adverse party's witnesses through cross-examination on the basis of the latter's judicial affidavits takes away from such client a right guaranteed by the Constitution. They contend that removing from an accused, by reason of the fault of his or her counsel, a personal right guaranteed by the Constitution through a mere procedural rule cannot be done even by the Court.[25]

Moreover, petitioners argue that Judge Gamboa-Delos Santos committed grave abuse of discretion in issuing the Order dated June 6, 2018. They maintain that Atty. Adan presented a valid cause for his failure to appear at the scheduled hearing on May 23, 2018. They also assert that the abuse of discretion was patent because Judge Gamboa-Delos Santos relied on the Revised Guidelines for Continuous Trial of Criminal Cases and construed Atty. Adan's motion as one for postponement of the scheduled hearing when it should have been treated as a motion to lift the order that deemed as waived their right to cross-examine Nenita for failure of Atty. Adan to attend the hearing on May 23, 2018. According to petitioners, the waiver of a party's right to cross-examine a witness on the ground of the failure of his or her counsel to appear without a valid cause despite due notice is contained in the second sentence of Section 10(b) of the Judicial Affidavit Rule.[26]

Lastly, petitioners allege that there was grave abuse of discretion on the part of Judge Gamboa-Delos Santos when she allowed the taking of Rodel's testimony in open court even if there was no judicial affidavit submitted. They posit that the Revised Guidelines on Continuous Trial of Criminal Cases did not remove the requirement of submission of judicial affidavits, especially when the complainant, as in this case, is represented by a duly authorized private prosecutor.[27]

Respondents' Arguments

In her Comment,[28] Judge Gamboa-Delos Santos alleges that in determining the reasonableness of the absence of Atty. Adan at the scheduled hearing for the cross-examination of Nenita, she used as reference the motion for postponement provision of the Revised Guidelines for Continuous Trial of Criminal Cases which states the only allowable reasons for postponement, namely: (1) acts of God, (2) force majeure, and (3) physical inability of the witness to appear and testify. Considering the absence of any of these circumstances, Judge Gamboa-Delos Santos deemed waived the right of petitioners to cross-examine Nenita.[29]

Although Judge Gamboa-Delos Santos did not make any reference to Section 10(b) of the Judicial Affidavit Rule in resolving the pending incident,[30] she nonetheless alleges that such provision is applicable and consistent with the provisions of the Revised Guidelines for Continuous Trial of Criminal Cases; and it even strengthens the basis for her assailed order that considered as waived the right of petitioners to cross-examine Nenita.[31] Moreover, Judge Gamboa-Delos Santos avers that she did not consider the medical certificate of Atty. Adan because apart from being unnotarized, it failed to show an indication that his condition necessitated medical intervention.[32]

Additionally, in allowing the prosecution to utilize the affidavit previously executed by Rodel before the investigating prosecutor, Judge Gamboa-Delos Santos alleges that she also relied on the Revised Guidelines for Continuous Trial of Criminal Cases, which is instructive on the matter and contains the latest applicable rule promulgated by the Supreme Court.[33]

For his part, Rodel also filed a Comment/Opposition[34] wherein he alleges that the petition should be dismissed based on the following grounds: (1) it should have been filed with the Regional Trial Court (RTC) in accordance with the Rules of Court; (2) Judge Gamboa-Delos Santos did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in (a) issuing the Order dated June 6, 2018 and construing Atty. Adan's absence as a

waiver to cross-examine Nenita, and (b) allowing the taking of Rodel's testimony even if there was no judicial affidavit submitted; and (3) the issuance of a TRO or WPI is moot in view of the voluntary inhibition of Judge Gamboa-Delos Santos.[35] Rodel argues that Atty. Adan is estopped from questioning the presentation of the former as witness considering that Atty. Adan was able to cross-examine him. Furthermore, Rodel submits that there was no hint of whimsicality on the part of Judge Gamboa-Delos Santos as would amount to an evasion of a positive duty enjoined by law.[36]

The Court's Ruling

The petition is partly meritorious.

At the outset, it bears stressing that although the Court, the Court of Appeals, and the Regional Trial Courts have concurrent original jurisdiction over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus, parties are directed, as a rule, to file their petitions before the lower-ranked court.[37] The concurrent jurisdiction of courts to issue any of these extraordinary writs is not to be taken as according to the parties' absolute, unrestrained freedom of choice of the court to which application therefor will be directed. After all, there is a hierarchy of courts, which serves as a general determinant of the appropriate forum for petitions for the extraordinary writs.[38]

The principle of hierarchy of courts dictates that direct recourse to the Court is not proper because "the Supreme Court is a court of last resort and must remain to be so in order for it to satisfactorily perform its constitutional functions, thereby allowing it to devote its time and attention to matters within its exclusive jurisdiction and preventing the overcrowding of its docket." [39] Consistent with this principle, Section 4, Rule 65 of the Rules of Court provides that a petition for certiorari, prohibition, or mandamus, like the present case, which relates to the acts or omissions of a lower court, should be filed in the RTC exercising jurisdiction over the territorial area, viz.:

SEC. 4. When and where petition filed. — x x x

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals. (*Italics supplied.*)

The present petition for certiorari involves Judge Gamboa-Delos Santos' issuance of the Order dated June 6, 2018 in Criminal Case No. 17-0597 in her capacity as Presiding Judge of Branch 4, MTCC, City of San Fernando, Pampanga. Thus, direct resort to the Court, in violation of the doctrine of hierarchy of courts, is a sufficient cause for the dismissal of the petition.[40]

Nevertheless, the Court has allowed the invocation of its original jurisdiction to issue writs of certiorari in certain instances on the ground of special and important reasons clearly stated in the petition, such as, "(1) when dictated by the public welfare and the advancement of public policy; (2) when demanded by the broader interest of justice; (3) when he challenged orders were patent nullities; or (4) when analogous exceptional and compelling circumstances called for and justified the immediate and direct handling of the case." [41]

Considering that what is at stake is petitioners' liberty as they are criminally charged with falsification of documents, the Court, in the broader interest of justice, deems it proper to relax the rule on hierarchy of courts and, consequently, permit petitioners' direct resort to the Court.

It is improper for the Court to resolve the question of constitutionality of the second sentence of Section 10(b) of

the Judicial Affidavit Rule because it is not the *lis mota* of the case.

Notably, it is only before the Court that petitioners assail the constitutionality of the second sentence of Section 10(b) of the Judicial Affidavit Rule. Neither the prosecution nor the defense invoked the application of the challenged provision before the trial court. Furthermore, in resolving the issue of whether to consider as waived the right of petitioners to cross-examine Nenita, Judge Gamboa-Delos Santos did not make reference to the second sentence of Section 10(b) of the Judicial Affidavit Rule. Instead, she relied on the motion for postponement provision under the Revised Guidelines for Continuous Trial of Criminal Cases in order to determine the reasonableness of Atty. Adan's absence at the scheduled hearing for Nenita's cross-examination.

The courts, as a rule, will not resolve the constitutionality of a law when the controversy can be settled on other grounds.[42] In other words, the constitutionality must be essential to the disposition of the case or its *lis mota*.^[43]

As explained in *Venus Commercial Co., Inc. v. Department of Health*:^[44]

Lis mota is a Latin term meaning the cause or motivation of a legal action or lawsuit. The literal translation is "litigation moved." Under the rubric of *lis mota*, in the context of judicial review, the Court will not pass upon a question of unconstitutionality, although properly presented, if the case can be disposed of on some other ground, such as the application of the statute or the general law. The petitioner must be able to show that the case cannot be legally resolved unless the constitutional question raised is determined.^[45]

As correctly observed by Senior Associate Justice Marvic M.V.F. Leonen, the constitutionality of the second sentence of Section 10(b) of the Judicial Affidavit Rule is not the *lis mota* of the present case. Here, petitioners have made it appear that Judge Gamboa-Delos Santos used the second paragraph of Section 10(b) of the Judicial Affidavit Rule as legal basis for her Orders dated May 23, 2018 and June 6, 2018 that deemed Atty. Adan's absence as a waiver of the defense's right to cross-examine Nenita. As Judge Gamboa-Delos Santos' assailed Orders have no connection at all with the second paragraph of Section 10(6) of the Judicial Affidavit Rule, there is no genuine issue of constitutionality that merits the Court's attention.

Judge Gamboa-Delos Santos did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in deeming petitioners to have waived their right to cross-examine Nenita for failure of their counsel, Atty. Adan, to appear at the hearing set therefor. Nonetheless, the Court sets aside the Orders dated May 23, 2018 and June 6, 2018 as petitioners' constitutional right to cross-examine the witnesses against them is of paramount importance.

It appears that petitioners and their counsel were duly notified of the schedule of the hearings for the case. Pertinent portions of the Pre-trial Order^[46] dated December 13, 2017 provide:

VI. TRIAL DATES

For the Prosecution For the Defense

April 4, 2018

May 2, 2018

May 23, 2018 June 6, 2018

June 13, 2018

June 20, 2018

August 8, 2018

August 22, 2018

(all at 1:00 in the afternoon)

Failure on the part of either party to present evidence on any of the scheduled dates allotted to him/her/them with no prior notice of justifiable cause will be considered a waiver on his/her/their part to present evidence on such date and the same will be deemed forfeited and irreplaceable in line with Section 8, R. A. 8433 (The Speedy Trial Act).[47]

Petitioners and Atty. Adan were twice notified of the hearing on May 23, 2018: first, during the conduct of the pre-trial on December 13, 2017,[48] and second, on April 4, 2018 when the parties were informed that the next hearing on May 23, 2018 was for the purpose of conducting the cross-examination of Nenita.[49] Notably, it was Atty. Adan who requested that the conduct of cross-examination be set on the next hearing date considering that he was belatedly served with a copy of Nenita's judicial affidavit.[50] However, on May 23, 2018, Atty. Adan did not attend the hearing for the cross-examination of Nenita.

Judge Gamboa-Delos Santos did not find meritorious Atty. Adan's motion for reconsideration of the Order dated May 23, 2018 based on the Medical Certificate[51] he presented on June 6, 2018, which is also dated May 23, 2018. Notably, the medical certificate was notarized only on June 15, 2018. At the time the document was presented, Judge Gamboa-Delos Santos found it questionable as to its veracity and due execution for being unnotarized. She likewise did not find any indication in the medical certificate that Atty. Adan's condition was an emergency that required immediate medical intervention.

To reiterate, Judge Gamboa-Delos Santos' basis for considering as waived the right of petitioners to cross-examine Nenita is not the second sentence of Section 10(b) of the Judicial Affidavit Rule but the motion for postponement provision under the Revised Guidelines for Continuous Trial of Criminal Cases. She relied on the latter provision in order to determine the reasonableness of the absence of Atty. Adan at the schedule for the cross-examination of Nenita.

Part III(2)(d) of the Revised Guidelines for Continuous Trial of Criminal Cases expressly provides that a motion for postponement is prohibited, except if based on (1) acts of God, (2) force majeure, or (3) physical inability of the witness to appear and testify. "If the motion is granted based on [any of] such exceptions, the moving party shall be warned that the presentation of its evidence must still be finished on the dates previously agreed upon." [52]

The Court finds no error in Judge Gamboa-Delos Santos' reliance on the motion for postponement provision under the Revised Guidelines for Continuous Trial of Criminal Cases to determine the reasonableness of the absence of Atty. Adan at the schedule for the cross-examination of Nenita. Worth mentioning are the objectives behind the issuance of the Revised Guidelines for Continuous Trial of Criminal Cases, viz.:

- To protect and advance the constitutional right of persons to a speedy disposition of their criminal cases;
- To reinforce and give teeth to the existing rules on criminal procedure and other special rules prescribing periods for court action and those which promote speedy disposition of criminal cases; and
- To introduce innovations and best practices for the benefit of the parties.[53]

In view of the absence of any of the three allowable reasons for postponement, namely, (1) acts of God, (2) force majeure, and (3) physical inability of the witness to appear and testify, the Court sees no error in Judge Gamboa-Delos Santos' order deeming petitioners to have waived their right to cross-examine Nenita.[54] Additionally, even assuming that there was a valid ground for postponement, there was a failure on the part of

Atty. Adan to file a motion for such purpose and to submit proof of payment of the postponement fee, which is a requirement under the Revised Guidelines for Continuous Trial of Criminal Cases.[55]

Based on the foregoing considerations, Judge Gamboa-Delos Santos cannot be deemed to have acted with grave abuse of discretion amounting to lack or excess of jurisdiction when she issued the assailed Order dated June 6, 2018. It is clear that she only strictly enforced the appropriate rules promulgated by the Court. Needless to state, procedural rules should be treated with utmost respect and due regard as they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice.[56]

Nonetheless, the circumstances of the case impel the Court to afford petitioners the opportunity to cross-examine Nenita and thus set aside the following: (1) Order dated May 23, 2018, which deemed as waived petitioners' right to cross examine Nenita; and (2) Order dated June 6, 2018, which denied Atty. Adan's subsequent motion for reconsideration.

While Judge Gamboa-Delos Santos cannot be faulted for strictly applying the relevant procedural rules, the Court takes occasion to remind judges to be more circumspect in the exercise of their discretion in regard to their application of the rules of procedure.

"Procedural rules were precisely conceived to aid the attainment of justice."[57] Thus, "if a stringent application of the rules would hinder rather than serve the demands of substantial justice, the former must yield to the latter."[58] As enjoined by Section 6, Rule 1 of the Rules of Court, procedural rules shall be liberally construed in order to promote their objective to assist the parties in obtaining a just, speedy, and inexpensive determination of every action and proceeding.

In the present case, the Court finds that the liberal construction of the rules will better promote and secure a just determination of petitioners' culpability.

The right of petitioners to cross-examine Nenita, being a basic and fundamental right, should be seen as paramount. While the State which represents the people who may have been wronged by a crime also has the right to due process,[59] such right should not prevail over the accused's constitutional right to confront and cross-examine opposing witnesses when it is not shown that the accused applied machinations to unreasonably deny the prosecution of its ability to prove its case. To stress, "[p]aramount interests of justice should not be sacrificed for the sake of speed and efficiency."[60]

Here, there is no showing that petitioners had employed means to unreasonably deny the prosecution of its ability to prove its case or delay the latter's presentation of its evidence. While physical inability of an accused's counsel is, admittedly, not one of the grounds allowed for the postponement of the trial under the Revised Guidelines for Continuous Trial of Criminal Cases, the Court, in the interest of fairness and due process, deems the postponement proper.

For this purpose, as aptly propounded by Associate Justice Amy C. Lazaro-Javier, Atty. Adan could be called by the trial judge to swear to his medical certificate in order to address its lack of a notarial certificate. He could also be subjected to a meticulous examination by the prosecution on his claim about his eye infection on May 23, 2018. Moreover, he should be ordered to pay the postponement fee and the reasonable expenses of the prosecution witness, Nenita, who would have to be recalled for the cross-examination.

It bears noting that under the Revised Guidelines for Continuous Trial of Criminal Cases, trial dates are non-transferable and the presentation of evidence of the party moving for postponement would still be finished on the dates previously agreed upon.[61] The trial judge, for reason of the postponement, should be able to devise a

strategy that would make sure that the trial of the case will be completed within the prescribed period. In the present case, for instance, the trial judge could forfeit in favor of the prosecution one of the hearing dates allotted for the defense. Alternatively, in the absence of the defense counsel, the trial judge could appoint a counsel de oficio in order to ensure the continuous trial of the case.

In sum, while finding no grave abuse of discretion on the part of Judge Gamboa-Delos Santos in deeming waived the right of the defense to cross-examine Nenita, the Court resolves to set aside the Orders dated May 23, 2018 and June 6, 2018 in order to afford petitioners the opportunity to cross-examine the prosecution witness.

Judge Gamboa-Delos Santos did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when she allowed the taking of Rodel's testimony in open court even if there was no judicial affidavit.

Petitioners' basis for arguing that strict compliance of the Judicial Affidavit Rule is enjoined in cases where the party is represented by a private prosecutor is OCA Circular No. 05-2013[62] in relation to the Judicial Affidavit Rule.[63] This circular, however, finds no application in this case as it pertains to the "Modification of the Public Prosecutors' Compliance with the Provisions on the Judicial Affidavit Rule" for the period from January 1, 2013 to December 31, 2013.

Indeed, private prosecutors are charged with the duty to prepare judicial affidavits. However, with the effectivity of the Revised Guidelines on Continuous Trial of Criminal Cases on September 1, 2017, prosecutors, public or private, are now allowed to utilize duly subscribed written statements given to law enforcement or peace officers or the affidavits or counter-affidavits submitted before the investigating prosecutor as testimonies of their witnesses, viz.:

11. Form of testimony

In all criminal cases, including those covered by the Rule on Summary Procedure, the testimonies of the witnesses shall consist of the duly subscribed written statements given to enforcement or peace officers or the affidavits or counter-affidavits submitted before the investigating prosecutor, and if such are not available, testimonies shall be in the form of judicial affidavits, subject to the additional direct and cross-examination question.

The trial prosecutor may dispense with the sworn written statements submitted to the law enforcement or peace officers and prepare judicial affidavits of the affiants or modify or revise the said sworn statements before presenting it as evidence.

From the foregoing, the prosecution has thus three options that may be utilized as affidavits of its witnesses: (1) written statements given to law enforcement or peace officers; (2) affidavits or counter-affidavits submitted before the investigating prosecutor; and (3) judicial affidavits, if the first two options are not available.

Accordingly, the Court finds no basis in petitioners' allegation of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of Judge-Gamboa Delos Santos in allowing the presentation of Rodel as witness. Besides, Rodel's presentation as witness did not in any way result in the violation of petitioners' right to due process considering that Atty. Adan was able to cross-examine him.

As a final note, trial judges are reminded of Section 5,[64] Rule 65 of the Rules of Court which prohibits them from appearing in or filing an answer or comment to the petition or any pleading therein when the petition filed relates to their acts or omissions. The only exception is when their appearance or the filing of their answer or comment to the petition or any pleading therein is specifically directed by the court where the petition is pending.

WHEREFORE, the petition is PARTLY GRANTED. The Orders dated May 23, 2018 and June 6, 2018 issued in Criminal Case No. 17-0597 by Presiding Judge Jocelyn P. Gamboa-Delos Santos of Branch 4, Municipal Trial

Court in Cities (MTCC), City of San Fernando, Pampanga are SET ASIDE insofar as they deemed petitioners Loreto A. Cañaveras and Ofelia B. Cañaveras to have waived their right to cross-examine prosecution witness Nenita G. Mariano. The trial court is DIRECTED to proceed with the cross-examination of Nenita G. Mariano and to continue the criminal proceedings with dispatch.

SO ORDERED.

Gesmundo, C.J., Caguioa, Hernando, Zalameda, M. Lopez, Gaerlan, Rosario, J. Lopez, Dimaampao, Marquez, Kho, Jr., and Singh, JJ., concur.

Leonen, SAJ., see separate concurring opinion.

Lazaro-Javier, J., see concurrence.

[1] Entitled "Petition for Certiorari under Rule 65 with Prayer for the Issuance of a Temporary Restraining Order (TRO) or Writ of Preliminary Injunction against Public Respondent from Further Proceeding in the Case and a Petition to Declare the Second Sentence of Sec. 10(B) of the Judicial Affidavit Rule Unconstitutional"; rollo, pp. 3-14.

[2] Id. at 15-16.

[3] SECTION 10. Effect of Non-Compliance with the Judicial Affidavit Rule. –

x x x x

(b) x x x Counsel who fails to appear without valid cause despite notice shall be deemed to have waived his client's right to confront by cross-examination the witnesses there present.

[4] Dated January 1, 2013.

[5] Rollo, p. 4.

[6] See Order dated May 23, 2018; id. at 18.

[7] Id.

[8] Id.

[9] Id. at 55. It appears that the Medical Certificate dated May 23, 2018 was only notarized on June 15, 2018.

[10] See Order dated June 6, 2018; id. at 15.

[11] A.M. No. 15-06-10-SC, approved on April 25, 2017 and took effect on September 1, 2017.

[12] Rollo, p. 15.

[13] Id. at 15-16.

[14] Id. at 15.

[15] Id. at 52.

[16] Id. at 27-28.

[17] Id. at 16.

[18] Id. at 6.

[19] Id. at 62-63.

[20] Id. at 90-92.

[21] Id. at 4, 53.

[22] Id. at 4, 54.

[23] Id. at 55.

[24] Id. at 5.

[25] Id. at 8.

[26] Id.

[27] Id. at 10.

[28] Id. at 72-80.

[29] Id. at 76-77.

[30] Id. at 73.

[31] Id. at 77.

[32] Id. at 78.

[33] Id. at 79.

[34] Id. at 98-105.

[35] Id. at 99-100.

[36] Id. at 103.

[37] Ramos v. National Commission on Indigenous Peoples, G.R. No. 192112, August 19, 2020, citing Gios-Samar, Inc. v. Department of Transportation and Communications, G.R. No. 217158, March 12, 2019.

[38] See People v. Cuaresma, 254 Phil. 418, 426-427 (1989).

[39] Dy v. Bibat-Palamos, 717 Phil. 776, 782 (2013), citing Cabarles v. Judge Maceda, 545 Phil. 210, 223 (2007).

[40] Ramos v. National Commission on Indigenous People, supra note 37.

[41] Dy v. Bibat-Palamos, supra note 39 at 783, citing Republic v. Caguioa, 704 Phil. 315, 328 (2013).

[42] Parcon-Song v. Parcon, G.R. No. 199582, July 7, 2020, citing Spouses Mirasol v. Court of Appeals, 403 Phil. 760, 774 (2001).

[43] See National Federation of Hog Farmers, Inc. v. Board of Investments, G.R. No. 205835, June 23, 2020.

[44] G.R. No. 240764, November 18, 2021.

[45] Id., citing ANGKLA: Ang Partido ng mga Pilipinong Marino, Inc. v. Commission on Elections, G.R. No. 246816, September 15, 2020.

[46] Rollo, pp. 81-87.

[47] Id. at 86-87.

- [48] See Pre-trial Order dated December 13, 2017; *id.* at 81-87.
- [49] See Order dated April 4, 2018; *id.* at 88-89.
- [50] *Id.* at 89.
- [51] *Id.* at 55.
- [52] See Part III(2)(d) of the Revised Guidelines for Continuous Trial of Criminal Cases.
- [53] See Part II of the Revised Guidelines for Continuous Trial of Criminal Cases.
- [54] Rollo, pp. 76-77.
- [55] See Part III(2)(d) of the Revised Guidelines for Continuous Trial of Criminal Cases.
- [56] *CMTC International Marketing Corporation v. Bhagis International Trading Corp.*, 700 Phil. 575, 581 (2012).
- [57] *Latogan v. People*, G.R. No. 238298, January 22, 2020.
- [58] *Id.*
- [59] *Kim Liong v. People*, 832 Phil. 8, 26 (2018).
- [60] *Dy Teban Trading, Inc. v. Dy*, 814 Phil. 564, 585 (2017), citing *Reyes v. CA*, 335 Phil. 206, 217 (1997).
- [61] See Part III(2)(d) of the Revised Guidelines for Continuous Trial of Criminal Cases.
- [62] *Re: Modification of the Public Prosecutors' Compliance with the Provisions on the Judicial Affidavit Rule*, dated January 10, 2013.
- [63] Rollo, p. 10.
- [64] Section 5, Rule 65 of the Rules of Court provides:

SEC. 5. Respondents and costs in certain cases. — When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as private respondent or respondents with such public respondent or respondents, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents.

Unless otherwise specifically directed by the court where the petition is pending, the public respondents shall not appear in or file an answer or comment to the petition or any pleading therein. If the case is elevated to a higher court by either party, the public respondents shall be included therein as nominal parties. However, unless otherwise specifically directed by the court, they shall not appear or participate in the proceedings therein.

CONCURRING OPINION

LEONEN, SAJ.:

I concur in the result of the ponencia of my colleague, Associate Justice Henri Jean Paul B. Inting. I submit this Opinion to further clarify my position.

The Petition[1] filed before this Court arose from a criminal case for falsification of public documents under Article 172, in relation to Article 171, of the Revised Penal Code, filed against Spouses Loreto Cañaveras and Ofelia B. Cañaveras (Cañaveras Spouses) before the Municipal Trial Court in Cities, San Fernando, Pampanga, presided by Judge Jocelyn P. Gamboa-Delos Santos (Judge Gamboa-Delos Santos).[2] The Cañaveras Spouses were represented by Atty. Vicente Dante P. Adan (Atty. Adan). Among the witnesses for the prosecution are Nenita Mariano (Nenita) and Rodel G. Mariano (Rodel).[3]

Based on the records, Rodel alleged that his parents, Spouses Felipe and Nenita Mariano (Mariano Spouses) owned a piece of registered land (subject lot), the title over which was transferred from the Mariano Spouses to Spouses Abel and Maria Luz Landayan and the Cañaveras Spouses. At the time of transfer, however, Rodel claimed that Felipe had already died and therefore could not have signed the Deed of Absolute Sale covering the subject property. Rodel added that the signature on the Deed of Absolute Sale is allegedly not Nenita's.[4]

The trial dates were scheduled, as follows:[5]

For the Prosecution

For the Defense

April 4, 2018

May 2, 2018

May 23, 2018

June 6, 2018

June 13, 2018

June 20, 2018

August 8, 2018

August 22, 2018

The cross-examination of Nenita was scheduled on May 23, 2018, while the presentation of Rodel was scheduled on June 6, 2018.[6]

On May 23, 2018, Loreto manifested that their counsel, Atty. Adan, could not attend the hearing because the latter was indisposed.[7] The prosecution manifested that under the Revised Guidelines for Continuous Trial of Criminal Cases (Revised Guidelines), a party may only seek a postponement of hearing on the ground of physical inability of a witness to appear in court.[8] Thus, in a May 23, 2018 Order issued in open court, Judge Gamboa-Delos Santos construed Atty. Adan's absence "as waiver on the part of the defense to cross-examine" Nenita.[9]

On June 6, 2018, through a Manifestation with Motion to Lift Order Waiving the Right to Cross-Examine Nenita Mariano,[10] Atty. Adan moved to reconsider the May 23, 2018 Order on the ground that he experienced eye pains and discharge, as well as headache, which did not subside despite medication. Upon medical consultation on the same day, Atty. Adan found out that he has conjunctival cysts (cysts inside the eyelids), trichiasis (ingrowth or introversion of the eyelashes), and dry eye syndrome which required cyst excision.[11] He presented a medical certificate[12] issued by Dr. Allan Ashely P. Buco (Dr. Buco) of the Manila Doctors Hospital to support his claims.

The prosecution's counsels objected to Atty. Adan's motion because: (a) Atty. Adan's medical condition was not among the grounds for postponement allowed by the Revised Guidelines which also requires proof of payment the postponement fee; and (b) Atty. Adan's medical certificate was not notarized.[13]

In a June 6, 2018 Order, Judge Gamboa-Delos Santos denied Atty. Adan's motion for reconsideration of the May 23, 2018 Order.[14]

Trial then proceeded. Rodel was called to the stand but Atty. Adan objected to his presentation as witness, claiming that his Complaint-Affidavit[15] does not conform to the Judicial Affidavit Rule.[16] Notwithstanding Atty. Adan's contention that the Revised Guidelines is inapplicable considering the existence of a private prosecutor, Judge Gamboa-Delos Santos ruled that pursuant to the Revised Guidelines, counsels "can opt to utilize the Affidavit filed before the Office of the City Prosecutor." [17]

After the conclusion of Rodel's testimony, Atty. Adan sought to cross-examine Nenita because her testimony and judicial affidavit touched on the sale of the subject lot.[18] While the Court acknowledged Atty. Adan's medical condition during the May 23, 2018 hearing, it effectively ruled that: (1) the medical certificate should have been notarized, and (2) allowing the Cañaveras Spouses to cross-examine Nenita despite Atty. Adan's absence would violate the rules.[19]

It is in this context that petitioners Loreto and Ofelia Cañaveras contend that respondent Judge Jocelyn P. Gamboa-Delos Santos committed grave abuse of discretion when she construed Atty. Adan's absence as waiver on the part of petitioners to cross-examine Nenita and when she allowed the prosecution to utilize Rodel's Complaint-Affidavit and to present him as a witness despite the lack of a judicial affidavit.

Considering that what is at stake is the liberty and the right to confrontation of an accused, this Court may disregard the attending procedural lapses so that the case may be resolved on its merits and that the broader interests of justice will be better served.[20] Thus, I agree that direct resort to this Court may be allowed in this case.[21]

As pointed out by Associate Justice Inting:

The right of petitioners to cross-examine Nenita, being a basic and fundamental right, should be seen as paramount. While the State which represents the people who may have been wronged by a crime also has the right to due process, such right should not prevail over the accused's constitutional right to confront and cross-examine opposing witnesses when it is not shown that the accused applied machinations to unreasonably deny the prosecution of its ability to prove its case. To stress, "[p]aramount interests of justice should not be sacrificed for the sake of speed and efficiency." [22] (Citations omitted)

The right to confront and cross-examine a witness is a fundamental requirement of criminal justice. *Kim Liong v. People* [23] states:

The right to confront and cross-examine witnesses is a basic, fundamental human right vested inalienably to an accused. This right ensures that courts can confidently ferret out the facts on the basis of which they can determine whether a crime occurred and the level of culpability of the accused. It is a basic requirement of criminal justice.[24]

This Court has explained that an accused's constitutional right to meet witnesses face to face "insures that the witness will give his testimony under oath, thus deterring lying by the threat of perjury charge; it forces the witness to submit to cross-examination, a valuable instrument in exposing falsehood and bringing out the truth; and it enables the court to observe the demeanor of the witness and assess his credibility." [25]

By exercising their right to confrontation, an accused may show that a prosecution witness's testimony is not

sufficient to prove guilt beyond reasonable doubt.[26] As this Court explained in *Heirs of Villanueva v. Heirs of Mendoza*:^[27]

However artful a corrupt witness may be, there is generally, under the pressure of a skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed, in the very nature of things, cannot be transcribed upon the record[.][28] (Citation omitted)

Here, petitioners stand accused of falsifying a public document under Article 172,^[29] in relation to Article 171^[30] of the Revised Penal Code. The imposable penalty for the crime allegedly committed involves the penalty of prision correccional in its medium and maximum periods,^[31] or 2 years, 4 months, and 1 day to 6 years.^[32]

Based on the records, it is alleged that Nenita is the owner of the subject lot transferred to petitioners, but the Mariano Spouses allegedly did not sign the Deed of Absolute Sale.^[33] However, Nenita appears to have previously executed another transfer document involving the subject lot.^[34] The records, however, are unclear as to the participation of Nenita and petitioners in the Deed of Absolute Sale.

Bearing in mind that the crime of falsification has no attempted or frustrated stage,^[35] I emphasize that Nenita's cross-examination appears to be relevant, if not crucial, in determining her credibility as a witness and ultimately, the guilt of petitioners. As submitted by Atty. Adan:

Atty. Adan:

The cross-examination your Honor, is very relevant because there was a testimony that the document was not signed by the witness, that it was not her signature. But in fact your Honor, that property covered by that title is where their house is erected, and they demolished it so that they can give it to the accused in exchange for the other lot. So that is the point of our cross-examination.

. . . .

Atty. Adan:

May we manifest, your Honor, because the testimony of, and the judicial affidavit of the other witness Nenita Mariano touches on the transaction and that is why we are asking that we be allowed to cross-examine Nenita so the story on how the transaction occurred will be clearer to the Court. . . . There are documents that show that these spouses, the accused have paid P1.5 million for the property. That is why we are asking the kind consideration of this Court to allow us to cross-examine Nenita Mariano because we have shown the validity for my absence, your Honor.^[36]

Despite the manifestations made by Atty. Adan, respondent Judge Gamboa-Delos Santos remained persistent in denying his motion for reconsideration of the May 23, 2018 Order.

While counsel's illness is not among the grounds for postponement under the Revised Guidelines, this Court has already recognized it as a valid ground.

In *McEntee v. Manotok*,^[37] plaintiff's counsel failed to appear in a hearing for a case for recovery of possession of a parcel of land. Instead, plaintiff's counsel filed a motion for continuance on the ground of illness. The trial court denied the motion and then allowed the defendant to present her evidence *ex parte*. Plaintiff's counsel then moved to have the assailed order reconsidered but this was denied. This Court ruled that counsel's illness constituted an accident that had prevented plaintiff's counsel to appear on the day set for trial. Consequently, this Court not only set aside the assailed order and the proceedings in the trial court, but also remanded the case to the

trial court for further proceedings.

Similarly, in *Crisologo v. Dural*,^[38] during one of the hearings in a case for reconveyance and damages, plaintiffs' counsel failed to appear due to influenza. One of the plaintiffs relayed this in open court and sought the postponement of the hearing. Upon the objection of respondent, the trial court issued an order denying the motion for postponement and dismissing the complaint. Plaintiffs then moved for reconsideration of the trial court's order and presented medical certificates attesting to the claim of illness of plaintiffs' counsel. This Court En Banc reversed and set aside the assailed order, explaining that:

A delay in the adjudication of the case occasioned by a reasonably justified continuance of the hearing, to afford a party (here the plaintiffs) the opportunity to present his evidence would not materially prejudice the defendant. On the contrary, one more postponement in the instant case, would be in consonance with fair play and justice[.][39] (Citation omitted)

While the foregoing cases involve civil cases, I submit that the rationale behind allowing continuance of a hearing on the ground of illness on the part a party's counsel should likewise apply in criminal cases. After all, a criminal case involves the liberty of an accused, as opposed to cases involving mere property rights. Undoubtedly, the ends of justice will be better served by granting such continuance.

In this regard, I submit that respondent Judge Gamboa-Delos Santos's reliance on the second sentence of Section 10(b) of the Judicial Affidavit Rule is misplaced.

The cited provision provides that "[c]ounsel who fails to appear without valid cause despite notice shall be deemed to have waived [their] client's right to confront by cross-examination the witnesses there present."

As stated above, in *McEntee* and *Crisologo*, this Court has already deemed illness as a valid cause that prevents a counsel from appearing at a hearing, for which this Court has allowed a continuance. Thus, a counsel who fails to appear due to illness despite notice cannot be deemed to have waived their client's right to confront a witness.

Time and again, this Court has chastised judges against conducting proceedings that place "more emphasis on procedural niceties to the sacrifice of substantial justice."^[40] That said, I agree that the June 6, 2018 Order^[41] must be set aside.

Additionally, our laws and jurisprudence do not require that a medical certificate be notarized before it be given weight, nor that it states that the infirm be advised to rest before their absence is excused. In fact, in *Union Motor Corporation v. National Labor Relations Commission*,^[42] this Court categorically stated:

We reject the petitioner's contention that the medical certificates adduced in evidence by the respondent to prove (a) his illness, the nature and the duration of the procedures performed by the dentist on him; and (b) the period during which he was incapacitated to work are inadmissible in evidence and barren of probative weight simply because they were not notarized, and the medical certificate dated September 23, 1997 was not written on paper bearing the dentist's letterhead. Neither do we agree with the petitioner's argument that even assuming that the respondent was ill and had been advised by his dentist to rest, the same does not appear on the medical certificate dated September 23, 1997; hence, it behooved the respondent to report for work on September 23, 1997.

. . . .

After full scrutiny and judicious evaluation of the records of this case, We find the appeal to be meritorious. Regrettably, the Labor Arbiter a quo clearly failed to appreciate complainant's pieces of evidence. Nowhere in our jurisprudence requires that all medical certificates be notarized to be accepted as a valid evidence. In this case, there is [neither] difficulty nor an obstacle to claim that the medical certificates presented by complainant

are genuine and authentic. Indeed, the physician and the dentist who examined the complainant, aside from their respective letterheads, had written their respective license numbers below their names and signatures. These facts have not been impugned nor rebutted by respondent-appellee throughout the proceedings of his case. Common sense dictates that an ordinary worker does not need to have these medical certificates to be notarized for proper presentation to his company to prove his ailment; hence, the Labor Arbiter a quo, in cognizance with the liberality and the appreciation on the rules on evidence, must not negate the acceptance of these medical certificates as valid pieces of evidence.

We believe, as we ought to hold, that the medical certificates can prove clearly and convincingly the complainant's allegation that he consulted a physician because of tooth inflammation on September 23, 1997 and a dentist who later advised him to rest and, thus, clinically extended his tooth extraction due to severe pain and inflammation.[43] (Emphasis supplied)

Here, as in *Union Motor*, the ophthalmologist who examined Atty. Adan, Dr. Bucu, issued three medical certificates using his official letterhead and indicated his license number below his name and signature. These medical certificates prove Atty. Adan's illness and the nature and duration of the procedures performed on him. Notarization, or the lack thereof, does not affect: (a) the admissibility of these medical certificates in evidence, and (b) their probative weight.

Based on the records, as in *Crisologo*, a delay in the proceedings, that is, the cross-examination of Nenita, occasioned by a reasonably justified continuance of the hearing such as the ailment of the defense counsel to afford accused the opportunity to confront a prosecution's witness would not materially prejudice the State. Indeed, the trial court could even afford the cancellation of the hearings scheduled on May 2, 2018 and June 13, 2018 for reasons not attributable to Atty. Adan or the accused.[44]

Indeed, the hearing on May 2, 2018 was cancelled because of the Mandatory Continuing Legal Education while the hearing on June 13, 2018 was cancelled because the public prosecutor was on leave.[45]

In light of the foregoing, the absence of Atty. Adan due to his ailment should not have been construed as a waiver to cross-examine one of the prosecution's witnesses and the trial court should have granted continuance. Thus, I agree with the ponencia to set aside the June 6, 2018 Order and allow the conduct of cross-examination of Nenita.

I also agree with the ponencia that respondent Judge Gamboa-Delos Santos did not act with grave abuse of discretion in allowing the prosecution to use Rodel's Complaint-Affidavit and present him as a witness. Under the Revised Guidelines, the prosecutor has the option to utilize duly subscribed written statements given to law enforcement officers or the affidavits submitted before the investigating prosecutor instead of a judicial affidavit.

On the constitutionality of the second paragraph of Section 10(b) of the Judicial Affidavit Rule, I humbly submit that petitioners did not present a genuine issue as the constitutional question is not the *lis mota* of the case, thus improper for this Court to resolve.

It is settled that this Court's power of judicial review cannot be loosely invoked.[46] Litigants must establish that the requisites of judicial inquiry are present, including that the issue on constitutionality is essential to the disposition of the case or its *lis mota*.[47]

In *Ang Partido ng mga Pilipinong Marino, Inc. (ANGKLA) v. Commission on Elections*,[48] this Court explained:

Lis mota is a Latin term meaning the cause or motivation of a legal action or lawsuit. The literal translation is "litigation moved." Under the rubric of *lis mota*, in the context of judicial review, the Court will not pass upon a question of unconstitutionality, although properly presented, if the case can be disposed of on some other ground, such as the application of the statute or the general law. The petitioner must be able to show that the case cannot be legally resolved unless the constitutional question raised is determined.[49] (Emphasis supplied,

citations omitted)

The basic principle in constitutional adjudication enjoins this Court from passing upon a constitutional question if the case can be disposed of on some other ground.[50]

Here, petitioners made it appear that respondent Judge Gamboa-Delos Santos used the second paragraph of Section 10(b) of the Judicial Affidavit Rule as legal basis in support of her ruling which construed Atty. Adan's absence as waiver of the defense's right to cross-examine Nenita. It is under this consideration that petitioners question the constitutionality of the assailed rule.

However, the records do not show that respondent Judge Gamboa-Delos Santos used the second paragraph of Section 10(6) of the Judicial Affidavit Rule as legal basis in issuing the June 6, 2018 Order. Respondent Judge Gamboa-Delos Santos even categorically stated this in her Comment as follows:

Petitioner maintained that second sentence of Section 10(b) of the Judicial Affidavit Rule is in effect taking away from an accused, a personal right guaranteed by the Constitution, that is, his/her right to cross-examine witnesses against him/her at the trial. Rights guaranteed under the constitution cannot be stripped away by mere procedural rule.

The undersigned public respondent, in the assailed Order dated June 6, 2018, as well as, the Order dated May 23, 2018 (where it was considered as waived the right of the defense to cross-examine witness Nenita Mariano), did not cite the second sentence of Section 10(b) of the Judicial Affidavit Rule as basis in resolving the incident therein pending.[51]

Moreover, even the ponencia has pointed out that:

Notably, it is only before the Court that petitioners assail the constitutionality of the second sentence of Section 10(b) of the Judicial Affidavit Rule.[52]

Considering that the June 6, 2018 Order sought to be set aside has no connection at all with the second paragraph of Section 10(6) of the Judicial Affidavit Rule, I submit that the constitutional issue presented by petitioners is not a genuine one that merits this Court's attention.

ACCORDINGLY, I vote to PARTLY GRANT the Petition.

[1] Rollo, pp. 3-13.

[2] Ponencia, p. 2.

[3] Rollo, p. 18.

[4] Id. at 52.

[5] Id. at 86-87.

[6] Id. at 18.

[7] Id.

[8] Id. at 22.

[9] Id. at 18.

[10] Id. at 58-60.

[11] Id. at 59.

[12] Id. at 55-57.

[13] Id. at 15-16.

[14] Id. Ponencia, p. 3.

[15] Rollo, p. 52.

[16] Id. at 27-28.

[17] Id. at 27.

[18] Id. at 44-45.

[19] Id. at 45-46.

[20] *People v. Villaber*, G.R. No. 247248, June 16, 2021, <<https://sc.judiciary.gov.ph/27542/>> [Per J. Inting, Third Division]. See also RULES OF COURT, Rule 1, sec. 6.

[21] Ponencia, pp. 8-9.

[22] Id. at 13-14.

[23] 832 Phil. 8 (2018) [Per J. Leonen, Third Division].

[24] Id. at 26.

[25] *Go v. People*, 691 Phil. 440 (2012) [Per J. Perlas-Bernabe, Third Division]. (Citation omitted)

[26] *J. Feria*, Dissenting Opinion in *Bustos v. Lucero*, 81 Phil. 640, 646-647 (1948) [Per J. Tuason, En Banc].

[27] 810 Phil. 172 (2017) [J. Peralta, Second Division].

[28] Id. at 185.

[29] Article 172. Falsification by Private Individual and Use of Falsified Documents. – The penalty of prison correccional in its medium and maximum periods and a fine of not more than 5,000 pesos shall be imposed upon:

1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document; and
2. Any person who, to the damage of a third party, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in the next preceding article. Any person who shall knowingly introduce in evidence in any judicial proceeding or to the damage of another or who, with the intent to cause such damage, shall use any of the false documents embraced in the next preceding article, or in any of the foregoing subdivisions of this article, shall be punished by the penalty next lower in degree.

[30] Article 171. Falsification by Public Officer, Employee or Notary or Ecclesiastic Minister. – The penalty of prison mayor and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

1. Counterfeiting or imitating any handwriting, signature or rubric;
2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;
3. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;

4. Making untruthful statements in a narration of facts;
5. Altering true dates;
6. Making any alteration or intercalation in a genuine document which changes its meaning;
7. Issuing in authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such copy a statement contrary to, or different from, that of the genuine original;
or
8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

The same penalty shall be imposed upon any ecclesiastical minister who shall commit any of the offenses enumerated in the preceding paragraphs of this article, with respect to any record or document or such character that its falsification may affect the civil status of persons.

[31] REVISED PENAL CODE, Art. 172.

[32] *People v. Tabanao*, 116 Phil. 474, 477 (1962) [Per J. Labrador, En Banc].

[33] *Rollo*, p. 52.

[34] *Id.* at 37.

[35] *In re: Fake Decision Allegedly in G.R. No. 75242*, 491 Phil. 539, 567 (2005) [J. Callejo, Sr., En Banc].

[36] *Rollo*, pp. 25, 44-45.

[37] *McEntee v. Manotoc*, 113 Phil. 249 (1961) [Per J. Labrador, En Banc].

[38] 122 Phil. 184 (1965) [Per J. Paredes, En Banc].

[39] *Id.* at 188.

[40] *Sarmiento v. Juan*, 205 Phil. 335, 341-342 (1983) [Per J. Vasquez, First Division].

[41] *Rollo*, pp. 15-16.

[42] 487 Phil. 197 (2004) [Per J. Callejo, Sr., Second Division].

[43] *Id.* at 206-208.

[44] *Rollo*, pp. 88-89.

[45] *Id.* at 89.

[46] *National Federation of Hog Farmers, Inc. v. Board of Investments*, G.R. No. 205835, June 23, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66343>> [Per J. Leonen, En Banc].

[47] *Id.*

[48] G.R. No. 246816, September 15, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66558>> [Per J. Lazaro-Javier, En Banc]. See also *Venus Commercial Company, Inc. v. Department of Health*, G.R. No. 240764, November 18, 2021, <<https://sc.judiciary.gov.ph/27044>> [Per J. Lazaro-Javier, First Division].

[49] *Id.*

[50] *General v. Urro*, 662 Phil. 132, 144 (2011) [Per J. Brion, En Banc].

[51] *Rollo*, p. 73.

[52] *Ponencia*, p. 9.

CONCURRENCE

LAZARO-JAVIER, J.:

I concur.

Public respondent's Order dated May 23, 2018, and subsequent Orders were indeed issued with grave abuse of discretion. It is not automatic that an accused through counsel is denied effective cross-examination only because the defense counsel is absent. Section 10(b) of the Judicial Affidavit Rule itself provides the exception to the rule – valid cause.

Here, the defense counsel suffered an eye infection on the hearing date itself. As mentioned in the ponencia, the eye infection involved eye pain, headache, discharge of rheum, conjunctival cysts, trichiasis, and dry eye syndrome. It was validated, though unnotarized, by a Medical Certificate dated May 28, 2013.

With this situation, it was impossible for the defense counsel to have filed a motion to postpone the hearing on May 28, 2013, and paid the postponement fee before this date. For sure, he could have called the courthouse but we have no information to verify the feasibility of giving this notice. We do not know if the courthouse had a phone, if the defense counsel's clients had phones, or if he could have made the call given his condition. In any event, this matter was not canvassed by the trial judge when she exercised her discretion.

My point here is this. There was an exaggerated reliance upon the text of Section 10(b) at the expense of both the actual and potential contexts of the events on May 28, 2013 and on June 6, 2018, when the defense counsel sought a reconsideration of the waiver. In my analysis, this constitutes grave abuse of discretion.

The issue was halfway a procedural matter – the waiver of the cross-examination of a prosecution witness due to the absence of the defense counsel, which he was seeking to set aside on account of his eye illness on the date of the hearing.

But it was also halfway an issue of a substantive right – the right of an accused to confront an accuser and/or an adverse witness and the potential imposition of criminal and civil penalties upon petitioners as a result of the waiver.

The trial judge may have been correct in finding deficiencies and issues about the Defense Counsel's medical cause. These deficiencies and issues, however, could have been clarified and corrected at the hearing on June 6, 2018. The trial judge could have called the defense counsel to swear to his Medical Certificate, thus, addressing the lack of a notarial certificate to his Medical Certificate. Right there and then too, she could have subjected the defense counsel to rigorous examination by the prosecution on his claim about his eye infection on May 28, 2013. The defense counsel could have also been ordered to pay the postponement fee and the reasonable expenses of the witness who had to be recalled for the cross-examination.

Why should the trial court bother itself with all these?

It is because of the interplay between the procedural and substantive aspects of the issue of waiver as a result of the defense counsel's absence. Verily, had all the foregoing avenues of circumspection been observed, we would not be here dealing with sacrificing an accused's right to confront the accuser and/or adverse witness in relation to the absence and eye infection of the defense counsel, and in the process delaying what would have been a straightforward disposition of the criminal case of estafa.

The trial court's exercise of discretion ran contrary to the goal of every rule of procedure – liberality and

proportionality with an eye to a just, speedy, and inexpensive determination of an action. This is a rule of first principles the disregard of which amounts to grave abuse of discretion. While for sure done in good faith, the trial court's failure to consider these first principles amounted to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law.

In every iteration of our Rules of Civil Procedure, we have painstakingly prefaced each and every rule with this reminder: "These rules shall be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding."

This is not a rudderless or purposeless liberality we serve as the rule of thumb for construing our rules. It is liberality within the context of achieving the goal of just, speedy, and inexpensive procedures. Implicit in this guideline is the requirement of proportionality. We have to ask – if we apply this rule verba legis, what harm would occur, and upon whom? We have to be mindful of the proportion of the impact upon the losing party and the perceived violation perpetrated by the latter.

Here, in the proper weighing of the values involved, the trial judge could have factored in the fairness of potentially sending petitioners to jail when the defense counsel's violation – if indeed the eye injury were not a valid cause – could have been punished by some other means. As I have said, the trial court –

x x x could have called the defense counsel to swear to his Medical Certificate, thus addressing the lack of a notarial certificate to his medical certificate. Right there and then too, she could have subjected the defense counsel to rigorous examination by the prosecution on his claim about his eye infection on May 28, 2013. The defense counsel could have also been ordered to pay the postponement fee and the reasonable expenses of the witness who had to be recalled for the cross-examination.

For greater certainty, Sections 5 and 6 of Rule 135, Rules of Court, provide the basis for this manner of controlling the court proceedings and moving on using alternative means:

SECTION 5. Inherent Powers of Courts. — Every court shall have power:

(a)

To preserve and enforce order in its immediate presence;

(b)

To enforce order in proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority;

(c)

To compel obedience to its judgments, orders, and processes, and to the lawful orders of a judge out of court, in a case pending therein;

(d)

To control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a case before it, in every manner appertaining thereto;

(e)

To compel the attendance of persons to testify in a case pending therein;

(f)

To administer or cause to be administered oaths in a case pending therein, and in all other cases where it may be necessary in the exercise of its powers;

(g)

To amend and control its process and orders so as to make them conformable to law and justice;

x x x x

SECTION 6. Means to carry jurisdiction into effect. — When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules.

For the trial judge's failure to exercise her discretion properly and in the process gravely abusing it, given the context of what was at stake, the proffered valid cause for the defense counsel's absence, and the matters that could have remedied the defects and addressed the perceived violation, which the trial judge did not at all canvass.

For clarity, the proffered excuse given by the defense counsel constituted a valid cause to adjourn the cross-examination of the prosecution witness. To be fair to the witness, the Court could have imposed sanctions upon petitioners and their lawyers by requiring them to pay not only the postponement fee but also the reasonable costs for the recall of the witness.

In another vein, judges are not allowed to submit their own comments on petitions questioning their orders. This restriction is actually already in place in Section 5, Rule 65, Revised Rules of Court.[1]

There are good reasons for this interdiction.

For one, allowing them to do otherwise would not be efficient. Judges could better use their time, effort, and talent to resolve matters before them. For another, this procedure demeans their, or actually our, status as decision-makers. Judges are not litigants. Making judges argue their reasons and disposition apart from what has been said in their assailed Orders or Decisions diminishes the authority implicit in why we refer to them as rulings. Hence, we do not argue. Instead, we listen, consider, and adjudge. The assailed Orders or Decisions should be the ones to speak for their correctness and dignity, and their appropriateness and integrity.

Lastly, I urge our trial judges to interpret and apply our rules of procedure always with an eye to efficient outcomes. Very useful in this regard are the twin precepts of purposeful and reasoned liberality and proportionality.

On the other hand, lawyers must stop resorting to motions to recuse trial judges when they do not get what they want. The Code of Professional Responsibility, I am sure, already prohibits the misuse of court procedures to the detriment of the administration of justice. The Court is looking forward to putting more teeth to the enforcement of ethical practices and the inculcation of moral precepts in the general fiber of law practice. The childish tactic of

inhibiting judges from hearing a case because the ruling did not go the lawyer's way, as in this case, should already stop. I repeat what the Court said about this inimical maneuver —

The Court cannot countenance the ease with which lawyers, in the hopes of strengthening their cause in a motion for inhibition, make grave and unfounded accusations of unethical conduct or even wrongdoing against other members of the legal profession. It is the duty of members of the Bar to abstain from all offensive personality and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justness of the cause with which they are charged.[2]

[1] Rule 65 – Certiorari, Prohibition and Mandamus –

Section 5. Respondents and costs in certain cases. — When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as private respondent or respondents with such public respondent or respondents, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer[,] or person impleaded as public respondent or respondents.

Unless otherwise specifically directed by the court where the petition is pending, the public respondents shall not appear in or file an answer or comment to the petition or any pleading therein. If the case is elevated to a higher court by either party, the public respondents shall be included therein as nominal parties. However, unless otherwise specifically directed by the court, they shall not appear or participate in the proceedings therein. (5a)

(1997 RULES OF CIVIL PROCEDURE, AS AMENDED, EFFECTIVE JULY 1, 1997).

[2] Law Firm of Chavez Miranda Aseoche v. Lazaro, 794 Phil. 308, 321 (2016).

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